BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ROSEMARIE GEVARA	)	
Claimant	)	
	)	
VS.	)	
	)	
CREEKSTONE FARMS PREMIUM BEEF	)	
Respondent	)	Docket No. 1,028,434
	)	
AND	)	
	)	
AMERICAN HOME ASSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the May 17, 2006, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found that claimant was injured out of and in the course of her employment with respondent. Accordingly, Dr. Bradley Bruner was authorized as claimant's treating physician, and respondent was ordered to pay all medical expenses. Respondent was also ordered to pay temporary total disability benefits beginning April 26, 2006.

Respondent argues that claimant's knee injury occurred while she was simply walking on level ground and occurred because of a risk personal to claimant that was no different than any day-to-day activity of everyday living. As such, respondent requests the Board find that claimant's injury did not arise out of and in the course of her employment and that the ALJ exceeded his authority and/or jurisdiction in granting her benefits.

Claimant argues that her injury should, at the least, be characterized as a neutral risk since she had no preexisting right knee pain or problems before her injury on January 4, 2006. Claimant also claims that at the time of the injury, she was walking on a slick floor, a risk directly associated with her job. As a result, claimant requests the Board affirm the ALJ's preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

On January 4, 2006, claimant was working trimming meat for respondent. During her 15-minute break, she went to the restroom and then walked to the locker area. As she made a left turn in the locker room, her right foot slipped out from under her. She did not fall. Although the floor was always greasy and slippery, this day the floor was pretty clean, but it was wet. She stated she was wearing a plastic protective shoe she is required to wear at work. She stated that meat and grease would get on the plastic shoes while working. She admitted she would have had to clean her shoes before exiting the plant area to go to the restroom but stated the restroom was humid and damp.

After her slip, two coworkers assisted her to the nurse's station because she was unable to walk. At the nurse's station, her knee was bandaged and put on ice. She was told to come back every 30 minutes for more ice. She continued to have problems, and the nurse made an appointment for her to see Dr. Robert White on January 5. Dr. White gave her some temporary restrictions, and respondent provided her with accommodated work. The last day she performed the accommodated work for respondent was April 25.

Dr. White eventually told respondent that claimant needed to be seen by a specialist and recommended Dr. Bruner. Respondent called claimant in and told her that her medical treatment should be provided by her personal health insurance. Dr. Bruner performed arthroscopic surgery on claimant's right knee on May 1. At the time of the Preliminary Hearing, claimant was on crutches.

Claimant continues to have problems with her right knee. She also stated that she is now having back pain and left leg pain because she is putting all her weight on her left side while using her crutches.

Claimant admits that she complained of pain before January 4, 2006, because of the cold, but she stated the pain was in her legs, not her knees. She also previously had difficulty walking because of pain in her heels from the cold and from standing all the time at work.

Claimant's injury occurred while she was walking on a slick floor at work. She slipped and turned or twisted her knee. Because the accident occurred while claimant was at work, the accident occurred in the course of claimant's employment. However, the accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act.[1]

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[1] *See Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[2]

In *Hensley*[3], the Kansas Supreme Court adopted a risk analysis. It categorized risks into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the worker; and (3) neutral risks which have no particular employment or personal character. According to Larson's *The Law of Workmen's Compensation*, Sec. 10.31, the majority of jurisdictions compensate workers who are injured in unexplained falls upon the basis that an unexplained fall is a neutral risk and would not have otherwise occurred at work if claimant had not been working. The injury in this case was not the result of a fall, it was a slip. And it was not unexplained, it resulted from a slick or slippery floor. Accordingly, it resulted from a risk associated with the job.

Although walking can be described as a normal activity of day-to-day living, K.S.A. 44-2005 Supp. 508(e) does not exclude "accidents" that are the result of such activity, but rather excludes injuries where the "disability" is a result of the natural aging process or the normal activities of day-to-day living. The intent of this statute is to avoid paying workers compensation benefits for conditions that result from risks that are solely personal to the worker.[4] Such was not the situation in this case. Had claimant not been employed as she was, she would not have been equally exposed to the risk that ultimately caused her injury.[5]

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated May 17, 2006, is affirmed.

IT IS SO ORDERED.

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[2] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

[3] *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

[4] *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972); *Anderson v. Scarlett Auto Interiors*, 31 Kan. App. 2d 5, 61 P.3d 81 (2002); *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

[5] See *Anderson*, 31 Kan. App. 2d at 11.

Dated this _____ day of August, 2006.

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BOARD MEMBER

c: Gary K. Albin, Attorney for Claimant
Timothy C. Gaarder, Attorney for Respondent and its Insurance Carrier